

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 12

UTILITY LINE ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) 12, and addresses the regional modifications and conditions for this NWP. The Great Lakes & Ohio River Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications of this NWP by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions are necessary to address important regional issues relating to the aquatic environment. These regional issues are identified in this document. These regional conditions are being required to ensure that this NWP authorizes activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters and other geographic areas in which this NWP should be regionally conditioned or excluded from NWP eligibility, as described below, to further ensure that the NWP does not authorize activities that may exceed the minimal adverse effects threshold.

1.0 Background

In the September 26, 2006, issue of the Federal Register (71 FR 56258), the Corps of Engineers (Corps) published its proposal to reissue the existing NWPs and issue six new NWPs. To solicit comments on its proposed regional conditions for the proposed NWP reissuance, the Detroit District issued a public notice on October 24, 2006 (Encl. 1). The notice included regional conditions proposed by Detroit District. The issuance of the NWPs was announced in the March 12, 2007, Federal Register notice (72 FR 11092). After the publication of the final NWPs, the Detroit District considered the need for regional conditions for this NWP. The Detroit District findings are discussed below.

2.0 Consideration of Public Comments

2.1 General Comments

(1) NWP 12, as proposed in the Federal Register on September 26, 2006, did not authorize the construction or maintenance of access roads, as was included in the 2002 NWP 12, and included notification requirements only for proposed work that required a Section 10 permit or would result in a loss of greater than 1/10th acres of waters of the United States. NWP 12 in its final form as reissued in the Federal Register on March 12, 2007, reinserted authorization for construction of access roads for the construction and maintenance of utility lines. The final NWP 12 also included the five notification requirements present in the 2002 NWP 12 but not present in the proposed language. The Michigan Department of Environmental Quality (MDEQ) specifically noted the differences in its comments to the proposed rules (Encl. 8). The MDEQ added and subsequently modified a new condition addressing the material removed from trenches and its disposal. The final version of the Detroit District regional conditions for NWP

12 to which MDEQ has granted conditional Water Quality Certification/ CZM consistency (Encl. 10) are as follows:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and access roads are limited to 1/4 acre. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. The Corps of Engineers will conduct agency coordination with the Michigan Department of Environmental Quality for overall projects proposing more than two crossings of waters of the U.S. and/or more than one acre of impacts to waters of the U.S.
- e. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
 - 1) the line must be embedded at least 6 feet below the authorized Federal channel depth;
 - 2) existing and proposed elevation information on precise plan and section scale drawings are required;
 - 3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- f. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.
- g. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be disposed of in uplands.

Detroit District will include (g) above in the MDEQ regional conditions for WQC and CZM consistency.

(2) The U.S. Fish and Wildlife Service (FWS) stressed the importance of considering long, linear projects involving multiple wetland crossings as a single, complete project in order to avoid piecemealing of project impacts and to prevent those impacts from exceeding the minimal effects threshold (Encl. 2). FWS supported the limitation of impacts for substations to 1/4 acre.

FWS stated that the Corps proposed to eliminate several of the previously existing pre-construction notification (PCN) requirements. The PCN requirements of concern to the FWS were added back in the final NWP issued on March 17, 2007. The FWS piecemealing concerns are addressed in General Condition 28 which specifically requires that an activity must be a

single and complete project, and that the same NWP cannot be used more than once for the same single and complete project.

The FWS recommended a regional condition to require an applicant to demonstrate that alternative construction methods, such as directional drilling to install utility lines, are not practicable. The FWS also recommended encouraging applicants not to clearing woody vegetation adjacent to streams in riparian corridors. General condition 20, Mitigation, states that (a) an activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site. It also requires that (b) mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. This covers the FWS recommendations and concerns. The Detroit District does not propose to add anything additional that would duplicate addressing of these issues.

(3) The Detroit District received a recommendation to require every utility line application to include positional information, i.e., latitude and longitude, to identify each end of the utility line path within the Corps jurisdiction. The District had already recognized the value of such information and proposed it as new condition (f). Such information would facilitate project site identification in a computer database, saving considerable time and resources. In addition, such coordinates are more frequently being requested by other agencies and government entities. Any subsequent incident involving the utility line would allow the line to be quickly identified for authorization, safety or navigation interests.

(4) The Detroit District received a suggestion to require submerged cables to be buried such that they do not emerge from the ground into the waterway until the lake bed elevation was 3 feet below Chart Datum (= Low Water Datum (LWD)). The reasoning behind the suggestion involved boat and swimmer safety since such a restriction would be effective along the shoreline, except in those areas where there are only shallow depth waterway passages which would mean the cable would remain buried throughout its passage. The District recognizes some potential value in the suggestion, but also notes that the restriction would result in potentially considerable additional expense for applicants. Such an expense to bury the cable must be weighed against the cost by the applicant to perform repairs when a non-buried cable is damaged by a boater. To date, we are unaware of any justification arising from any reported incidents that would impel the District to adopt such a restriction. Barring any other factors, the District believes that the decision to bury a cable is an economic one best decided by the applicant. It is not the Detroit District's mandate to dictate design, and increased cost, to applicants without an imperative basis. The District has no plans to require burial of such cables.

2.2 Comments on Proposed Regional Conditions applicable to NWP 12

The Detroit District proposed the following specific regional conditions for NWP 12:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.

- b. Impacts for substations and access roads are limited to 1/4 acre. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. The Corps of Engineers will conduct agency coordination with the Michigan Department of Environmental Quality for overall projects proposing more than 2 crossings of waters of the U.S. and/or more than 1 acre of impacts to waters of the U.S.
- e. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply: 1) the line must be embedded at least 6 feet below the authorized Federal channel depth; 2) existing and proposed elevation information on precise plan and section scale drawings are required; 3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- f. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.

2.2.1 Comments on Regional Condition a:

No specific comments were received on proposed Regional Condition a, which prohibits substations and permanent access roads below the Ordinary High Water Mark (OHWM). The shallow water areas and wetlands below the OHWM are extremely important around the Great Lakes region for their primary production and support for all life stages of the fish community. It is not standard practice in Michigan to construct permanent substations and access roads in waters of the U.S. Upland locations are nearly always available, and they are preferable from a construction and impacts standpoint. The condition is necessary to reduce the individual and cumulative impacts of the NWP to the minimal level.

2.2.2 Comments on Regional Condition b:

We received one comment of support for proposed Regional Condition b, which limits impacts for substations and access roads to 1/4 acre, and requires applicants to address practicable alternatives. As noted above, it is not standard practice in Michigan to construct substations and access roads in waters of the U.S. Upland locations are nearly always available, and they are preferable from a construction and impacts standpoint. Where construction may be necessary in waters of the U.S., 1/4 acre would limit impacts to the minimal level. The 1/4 acre limit would authorize an approximate 100 x 100 foot area, which is reasonable for these activities in Michigan.

2.2.3 Comments on Regional Condition c:

No specific comments were received on proposed Regional Condition c, which requires restoration for areas altered by mechanized clearing. The intent of the condition is to require restoration of forested wetlands which were temporarily impacted by construction. In Michigan, utility lines commonly impact forested wetlands. The temporary impacts include clearing wetlands for construction and long term maintenance. Unless these areas are restored to wetlands, many of the habitat functions are eliminated. The proposed condition was intended to require restoration of these areas to reestablish these functions.

2.2.4 Comments on Regional Condition d:

No specific comments were received on proposed Regional Condition d, which would establish agency coordination with MDEQ for actions which have more than two crossings as part of the same project and/or more than one acre of impacts. This condition was proposed to assess cumulative impacts from a project which has multiple crossings to ensure that it would have no more than minimal impact. In 2000, the MDEQ requested that the Detroit District prohibit activities under the NWP where the overall impacts of the project exceeded one acre. In response, the Detroit District added coordination with the MDEQ for these activities, and continued the coordination in the 2002 NWP reauthorization. The MDEQ did not refer to this coordination in its 2006 comments, but did include the District's regional condition in its own consistency requirements. The District does not expect that the MDEQ's concerns lessened in the interim, and presumes that the MDEQ expects such coordination to continue. A one acre disturbance for a utility line would be the approximate equivalent of an 85 foot working width for 500 linear feet. The District has not received a proposal of these dimensions to date. The District proposes to continue this regional condition.

2.2.5 Comments on Regional Condition e:

No specific comments were received on proposed Regional Condition e, which sets specific requirements for utility lines crossing navigable waters of the U.S. This existing condition on NWP 12 sets prerequisites so that utility lines will not interfere with authorized Federal projects. Minimum requirements are essential to provide for maintenance and modification of Federal projects. It also requires specific and accurate plan and cross section drawings with elevation information, and as-built drawings with points of entry and exit of the installation after construction is complete. These requirements are necessary to accurately identify the locations of the structures for safety, navigational, and charting needs.

2.2.6 Comments on Regional Condition f:

We received one comment of support for proposed Regional Condition f, which requires applicants to provide latitude and longitude location information for each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between them where the utility line changes direction. This information will facilitate location of the project site, saving time and resources. It will also allow accurate identification of the utility line for subsequent inquiry, again saving time and resources. It will provide accurate identification for safety, navigational, and charting needs.

2.2.7 Comments on Regional Condition g:

Detroit District did not originally proposed Regional Condition g, but has included it in response to comments from the MDEQ. This condition will dispel any possible misconceptions for an applicant as to what is acceptable for the disposal of excess excavated materials within NWP 12.

2.3 Comments on Proposed Regional Conditions applicable to all NWPs

2.3.1 Proposed Regional Condition 1

Requirement to Submit a Joint Application.

The Detroit District proposes to continue its requirement to submit a Joint State/Federal application for proposed activities within Michigan. The Detroit District did not receive any comments on this condition. Since 1984, the Detroit District and the State of Michigan have had a joint processing agreement. This condition formalizes continuing this agreement with respect to the NWPs. The absence of this condition would cause additional time, expense, and confusion for the regulated public. The requirement to submit a joint application will mean that even for those NWPs that do not require Pre-Construction Notification (PCN) by the terms of the NWP, a PCN is regionally required and satisfied by the submittal of the required joint application. The District clarifies that the submittal of an application is not an authorization to perform the work. Requiring a PCN avoids the situation in which work is accomplished without the benefit of prior agency review and a determination as to whether the work would in fact qualify for a NWP and would in fact not exceed the minimal adverse effects threshold of the NWP.

2.3.2 Proposed Regional Condition 2

Required State Authorizations.

As a product of Detroit District's working relationship with the Michigan Department of Environmental Quality (MDEQ), the District proposes to continue notifying permittees of MDEQ permit requirements in NWP authorizations. This directly alerts the public to State permit requirements, and reduces potential unauthorized work. In addition, the MDEQ provided addendum comments dated May 24, 2007 (Encl. 7). The MDEQ stated a general condition applicable to all NWPs in order to receive Section 401 Water Quality Certification (WQC) and Section 307(c) (1) Coastal Zone Management (CZM) federal consistency:

In sensitive natural resource areas NWPs may only be issued if a state permit is also issued. These areas include: Designated Natural Rivers, Designated High Risk Erosion Areas, Designated Wilderness and Natural Areas, Designated Environmental Areas, areas containing state or federally listed or proposed threatened or endangered species, Designated Trout Streams, Designated Critical Dune Areas, and identified historic or archeological areas. NWPs issued absent state permit in these areas are denied Section 401 water quality certification and would be inconsistent with Michigan's CZM Program.

The Detroit District proposes to add this MDEQ condition to each NWP, despite partial redundancy to proposed District Regional Conditions 6, 7, and 8 (below).

2.3.3 Proposed Regional Condition 3

Presumed Certifications in State Authorizations.

The Detroit District proposes a new regional condition based on the presumption of State 401 Water Quality Certification and Coastal Zone Management certification inherent in a State authorization. The issuance of a permit by the MDEQ is understood to satisfy 401 WQC and CZM certification, provided the scope of authorized work is the same as that proposed in the application provided to the Corps. The Detroit District will presume that if the MDEQ has issued its authorization, then 401 WQC and CZM certification have been satisfied. This will save the additional time and expense that would be consumed by further coordination. The Detroit District received indirect concurrence with this position in the MDEQ letter dated May 24, 2007, which implied that no certification was conferred without state permit issuance.

2.3.4 Proposed Regional Condition 4

Requirements for Contaminated Dredging.

The Detroit District proposes to continue its requirement on dredging contaminated sediments that would be applicable to all NWPs. The condition addresses placement and testing requirements for the dredged materials, as stated in Section 7.4 below. The Detroit District did not receive any comments on the condition. The District concluded that one standard condition on dredging contaminated material would simplify matters for both the public and Corps staff. Contaminated sediments are an unfortunate industrial legacy in the Great Lakes, and the condition assures that projects affecting contaminated materials will continue to receive attention to assure that the impacts are no more than minimal.

2.3.5 Proposed Regional Condition 5

Preferred Dredging Periods.

The Detroit District proposes to continue the limitation of dredging to periods as identified by the Michigan Department of Natural Resources (MDNR). The MDNR identifies preferred dredge periods for protection of fisheries. The Detroit District did not receive any comments on this Regional Condition, a condition that reflects no change from the previous authorization. The Detroit District determined that a Regional Condition including the preferred dredge periods is appropriate, provided that there is sufficient flexibility to accommodate changes in water levels and special situations. Dredging can be performed under numerous NWPs, such as 3, 7, 12, 19, 35 and 43. It would be reasonable to set the standard for all of the NWPs in Michigan rather than limit it to a select few. This condition would prevent more than minimal harm to aquatic life by authorizing dredging only outside of known reproduction periods. This would limit exposure of sensitive eggs and fry to increased suspended sediment, increased soluble contaminants, and reduced oxygen levels. Therefore, the Detroit District will continue to include a condition as follows: Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example MDEQ has issued a permit and has not restricted the dredging activities to these periods).

2.3.6 Proposed Regional Condition 6

Designated Critical Resource Waters.

General Condition 19 stipulates types of critical resource waters. The Detroit District did not receive any comments on the Critical Resource Waters, and proposes to continue the current listings in Michigan. Dredging in these waters is excluded from the NWP. The Detroit District proposes to continue listing the following National and state officially Designated Critical Resource Waters in Michigan.

- a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.
- b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.
- c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.
- d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resource Waters (General Condition 19) in Michigan is amended to include the following:

All areas designated under Part 351, Wilderness and Natural Areas, of the Natural Resources and Environmental Protection Act, Public Act 451, 1994, as amended.

All rivers designated under Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act, as amended.

All Environmental Areas designated under Part 323, Shorelands Protection And Management, of the Natural Resources and Environmental Protection Act, as amended.

2.3.7 Proposed Regional Condition 7

National Wild and Scenic Rivers (NWSR).

There are no proposed amendments to the National Wild and Scenic Rivers list in the Detroit District. The Detroit District proposes to continue the existing listing, but with one clarification. We received a comment identifying the need to clarify the western termination point of the NWSR segment on the Pere Marquette River because US Highway 31, the termination point of record, has been relocated to the east. The relocation of a roadway does not alter the limits of a Congressionally designated NWSR segment of a river. Thus, the western terminus of the NWSR segment remains at Pere Marquette Highway, the old US Highway 31 bridge. We received no other comments on National Wild and Scenic Rivers.

2.3.8 Proposed Regional Condition 8

Critical Habitat for Federally Listed Threatened and Endangered Species in the Detroit District.

- a. The Detroit District proposes to continue the listing of critical habitat for piping plover (*Charadrius melodus*) in Michigan that was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969). We did not receive any comments concerning this listing.
- b. The Detroit District proposes to add to the District's list of critical habitat sites in Michigan a site listing for Hines' Emerald Dragonfly (*Somatochlora hineana*), proposed on July 26, 2006 in the Federal Register (Vol. 71, No. 143, pages 42441-42519). We received a comment expressing support for this proposed addition from the U.S. Fish and Wildlife Service (FWS) (Encl. 2).

3.0 Waters Excluded from NWP or Subject to Additional Pre-Construction Notification Requirements

3.1 Waters excluded from use of this NWP

The Detroit District did not receive recommendations on prohibiting this NWP in certain waters. The Corps addresses the outstanding natural resource areas via General Condition 19, and the Detroit District addresses them with Regional Conditions 6, Critical Resource Waters in Michigan, and 7, National Wild and Scenic Rivers. These conditions prohibit use of some NWPs in Critical Resource Waters and in National Wild and Scenic Rivers, while retaining availability for NWPs where impacts are no more than minimal. Detroit District has identified waters that will be excluded from use for substations and permanent roads under this NWP. These waters are: (1) areas below the Ordinary High Water Mark, (2) areas subject to inundation by the adjacent water body, and (3) areas which otherwise provide fishery habitat functions.

Reason for Exclusion: These waters are functionally essential for the maintenance of fish populations in the Great Lakes. They provide critical spawning, rearing and feeding areas for game fish and forage fish populations. They also play important roles in water quality improvement and erosion protection. It is not standard practice to construct substations and access roads in open water areas of the Great Lakes in Michigan.

3.2 Waters subjected to additional pre-construction notification requirements

The Detroit District has not identified specific waters that will be subject to additional notification requirements for activities authorized by this NWP. However, based on the joint processing agreement with the State of Michigan, Detroit District proposes to continue the condition which requires a joint Corps/MDEQ application for all work within Michigan. Applicants for this and any other NWP would be required to submit a verification request.

4.0 Alternatives

4.1 No Regional Conditions

Without proposed Regional Conditions 1, 2 and 3 which apply to all NWPs, an additional burden would be imposed on applicants by dismantling the working agreement between the Corps and MDEQ. Applicants would face increased complexity, paperwork, and time to secure State and Federal permits. Regional Conditions 4 and 5, applicable to all NWPs, are necessary to limit potential impacts on water quality that may occur from mishandling contaminated sediments,

and limit impacts on aquatic resources. Without proposed Regional Conditions 6 and 7, applicable to all NWPs, which supplements the list of Critical Waters, valuable aquatic resources would be affected. Without proposed Regional Condition 8, the final condition, critical habitat for Federally listed threatened and endangered species may be impacted.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

Detroit District has considered imposing limits on the NWP, and determined that the authorized limits are reasonable, except for substations and access roads, where the District has proposed a ¼ acre limit. The reduced size will assist in limiting individual and cumulative impacts for these features to no more than minimal. Detroit District does not expect an increase in individual permit applications as a result of these limits. The MDEQ supported the District's ¼ acre limit for substations. The MDEQ also supported the District's proposal to continue the requirement for coordination when overall projects propose more than two crossings of waters of the U.S., and/or when more than one acre of impacts to waters of the U.S. is proposed for all crossings associated with a complete project. The Detroit District decided to continue to include such coordination with the MDEQ because it has worked well since 2000 to facilitate efficient use of the program without exceeding minimal impacts. The District also proposes to continue its use because doing so provides broader response to the public's requests for authorization rather than prohibiting the use of the NWP for these activities in certain areas, notably in utility lines crossing from Michigan's Lower Peninsula to the Upper Peninsula. The proposed Regional Condition 1 which requires a joint MDEQ/Corps application form for all activities in Michigan provides the District considerable latitude in identifying any activities which may have more than minimal impact, and assures coordination. The District may then either condition these activities to reduce their impact to the minimal level, or evaluate these actions through the standard permit process.

4.3 Alternative Regional Nationwide Permit Conditions

The Detroit District does not consider additional Regional Conditions, other than the above, to be necessary based on the type of activities authorized under this NWP. The District considers the expected impacts to be minimal.

5.0 Endangered Species Act

5.1 General Considerations

The Detroit District will individually review NWP requests for compliance with the Endangered Species Act. The proposed Regional Condition 1, applicable to all NWPs, which requires a joint MDEQ/Corps application will insure that the Corps has the opportunity to do so. To make an initial determination, Detroit District uses the most current information provided from the U.S. Fish and Wildlife Service (FWS), data gathered by the Corps, or the Michigan Natural Features Inventory. In Michigan, a majority of endangered species are associated with shoreline ecosystems or wetlands. Although clearly their dispersal is limited, endangered species are an issue of concern for NWPs in some locations. Construction along the shoreline may encounter species such as: piping plover, Houghton's goldenrod, pitcher's thistle, dwarf lake iris, and Indiana bat, among others. Piping plover critical habitat was formally designated on May 7,

2001, and Hine's Emerald Dragonfly critical habitat was formally designated on July 26, 2006. The condition requiring a joint MDEQ/Corps application provides Detroit District the chance to evaluate activities for impacts to endangered species and compliance with the Endangered Species Act. Additional notification provisions are not considered necessary. The District has a standard local operating procedure agreement with FWS for endangered species review on NWP, as discussed below. Where endangered or threatened species are a concern, the District may consult with FWS during the NWP review process, or the District may assert its discretionary authority to require an individual permit for proposed work and initiate consultation through the individual permit process. The latter of these choices should only be used if there is value added that compensates for the added workload due to processing more individual permits. If the consultation is conducted under the Nationwide Permit process without the District's assertion of its discretionary authority, then the applicant will be notified that he can not proceed until the consultation is complete. If the District determines that the activity would have no effect on any endangered species, then the District would proceed to issue the NWP authorization.

5.2 Local Operating Procedures for Endangered Species

The Detroit District completed a Standard Local Operating Procedures for Endangered Species (SLOPES) agreement with FWS. The SLOPES agreement sets up a local operating procedure that is used for all projects that are reviewed under the Corps of Engineers general permit regulations, including NWPs. The procedure establishes a review process for the Corps and a framework for coordination with FWS. The local operating procedure ensures that the activities authorized under the NWP comply with ESA by initiating coordination with FWS for certain actions. A completed SLOPES agreement for Detroit District was finalized on August 11, 2000.

6.0 National Historic Preservation Act

6.1 General Considerations

The Detroit District proposes regional condition number one, applicable to all NWPs, based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental Quality (MDEQ), to provide that for every proposed project the submittal of a joint Corps/MDEQ permit application is required in Michigan. No NWP authorization is recognized without submittal (and processing) of a permit application. This not only eliminates any question as to whether a pre-construction notification (PCN) is required, but also provides the opportunity to review every proposed project for activities in geographic areas of high cultural resource site potential, or known locations of cultural resources including prehistoric sites, historic sites, tribal lands, traditional cultural properties, state landmarks or National Historic Landmarks. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process, or (2) the district engineer may assert its discretionary authority to require an individual permit for proposed work and initiate consultation through the individual permit process. The district engineer will pursue Option 2 only if there is value added that compensates for the increase in workload due to processing more individual permits (IPs). If the District determines that the activity would have no potential to cause effects on any historic properties, the District could proceed to issue the NWP authorization without further consultation with the SHPO. In accordance with General Condition 18(a), if there is potential to

effect and consultation is conducted under the nationwide permit process without the District asserting discretionary authority, then the applicant must be notified that work cannot be verified under the NWP until all Section 106 requirements have been satisfied.

6.2 Local Operating Procedures for National Historic Preservation Act

Section 106 procedures are currently under development between the Detroit District and the SHPO. On receipt of an application, the District determines whether or not the proposed action requires a Corps permit, and if so, determines the regulatory scope of analysis in order to initiate the NEPA process. The District determines whether the proposed action is a type of activity that has the potential to cause effects on historic properties, and defines the potential of the activity to cause effects on historic properties. The District identifies historic properties within the identified regulatory scope of analysis through communication with and/or review of various information sources, including the SHPO/THPO, Indian tribes, the District Archeologist, District files and records, the latest published/web-based version of the national Register, and other lists of properties determined eligible, as appropriate. The District documents, along with the basis, any determination of no potential to cause effect on historic properties in the administrative record. If necessary, the District may request an investigation in order to make this determination.

6.3 Local Operating Procedures for Tribal Consultation

Tribal consultation for the proposed reissuance of nationwide permits (NWP) for the Department of the Army Regulatory Permit Program was initiated on October 3, 2006 when HQUSACE notified 562 Federally recognized tribes via letter from MG Riley. This letter advised the tribes to comment on the Federal Register notice (71 FR 56258, 26 September 2006) and informed them of the forthcoming District Public Notices (issued by Detroit District for Michigan on 26 October 2006).

On 23 and 24 October 2006, Detroit District initiated consultation on the proposed regional conditions of the NWPs for LRE's regulatory area of responsibility (AOR) covering all of Michigan. In total, the District's public notice was mailed to 41 federally recognized tribes who either currently reside within the AOR (twelve tribes within Michigan) and/or have a potential historical interest within the AOR (all 41 tribes) and/or have adjudicated lands within the AOR (29 tribes, some no longer in Michigan). These tribes and the current proper contact person were identified with the assistance of the LRD tribal liaison officer, and updated with new information learned while making contacts (Reference tribal contact spreadsheets). In addition to mailing the public notice to each tribe, the Detroit District conducted three (3) separate telephone contacts with each of the 41 tribes in the AOR. Each of these contact sessions often required multiple attempts and often required leaving recorded messages. Many tribes were unresponsive. The contacts were tracked on a spreadsheet which is part of the record. The contacts were as follows: a) an initial contact with each tribe on or about 23-24 October 2006 to inform, explain and solicit inquiries regarding the proposed NWPs; b) a second contact on or about 15 November 2006 to inform, explain, and solicit inquiries and/or tribal concerns, and specifically to offer a face to face (government to government) meeting with each tribe; and c) a third contact on or about 4 December 2006 to inform, explain, solicit inquiries, and specifically alert the tribe that the public

notice period was coming to a close. Tribal contacts were informed that even after the regional NWP comment period ends, the District is fully open to any subsequent consultation that the tribe desires at any time. A few tribes asked clarification questions, which the District answered. A couple tribes sent responses stating that the tribe had no comments or concerns regarding the proposed regional NWP conditions. No tribe requested a formal consultation face to face meeting. The remaining tribes were silent and unresponsive to the process. None of the 41 tribes provided formal, or even informal, comments to the proposed regional NWP conditions. The general consensus gleaned from the numerous telephone contacts and conversations was that the tribes that were in communication with the District were satisfied with the District's past performance regarding tribal interests, and that the tribes saw no concerns with the proposed regional conditions.

Since we did not receive comments to address, we do not propose to add any special conditions at this time. The District will continue to be open and receptive to any communication from any tribe on any issue. Should review and/or consultation reveal the potential to cause effects on historic properties, the District will immediately advise the applicant of its findings and obligations relative to the NHPA including the Section 106 process, and suspend the NWP verification process until the Section 106 process is complete. The District will provide guidance to the applicant on format and content of the Section 106 review package, will discuss (with the applicant) measures or alternatives to avoid or minimize effects on historic properties, will identify consulting parties, and will authorize the applicant to initiate Section 106 consultation to obtain consulting party views on the determination and its basis.

After completion of this initial coordination, and following active efforts to reach consulting party agreement on avoidance/minimization measures, the District will assess and fully document the effects of the project proposal and provide to the consulting parties for review. If effect issues cannot be resolved, the District will continue consultation or request an opinion from the Advisory Council on Historic Preservation (ACHP). After consideration of the ACHP opinion, District will document its final decision in the administrative record and provide it to the consulting parties. When the Section 106 process is fulfilled, the District will continue processing the NWP verification request. Any mitigation resulting from the consultation will be incorporated into the permit verification. In addition, the verification will be conditioned to stipulate the DA's authority to revoke or suspend the permit if historic properties are discovered during construction in order to ensure that the permitted activity remains in compliance with the NHPA.

On issuance of a verification, The District, through its routine compliance and enforcement reviews will ensure that conditions for historic properties have been met and ensure that no impacts to historic properties or tribal resources will occur as a result of the permit verification action. In addition to the provisions of General Condition 18, the Detroit District includes the following Special Condition in every NWP verification letter: If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

7.0 Supplement to National Impact Analysis

7.1 Public interest review factors (33 CFR 320.4(a)(1))

In addition to the discussion in the national decision document for this NWP, the Detroit District has considered the local impacts expected to result from the activities authorized by this NWP, including the reasonably foreseeable cumulative effects of those activities.

(a) Conservation: Linear utility line projects, including access roads, will have secondary adverse impacts by fragmenting larger habitat areas. The linear features will create a barrier to movement of species and reduce the overall habitat functions. This will change areas that now support a variety of species into ones which would probably support considerably less diversity. The fragmentation will also degrade or foreclose the prospect of preservation of areas with high natural heritage value. Minor, long term adverse impacts are expected. The proposed conditions reducing the maximum footprint to ¼ acre and requiring restoration of disturbed wetland areas will reduce these minor impacts to a minimal level.

(b) Economics: The increased cost resulting from a regional condition mandating burial of a cable would have to be absorbed by the applicant, who would presumably pass it along to the end users of the provided service. Thus, a regional condition that results in an increase in cost may be expected to also result in an increase in service fees to the public, although such an increase is likely to be minimal. Minor, short or long term adverse impacts would be expected if such a condition were applied, and we do not propose it.

(c) Aesthetics: Utility line corridors through wetlands will alter the visual character of these areas, creating linear, man-made features in areas which currently may be dominated by natural qualities. The perception of these is almost always negative, but the depth of the perception varies with the extent of the work.

(d) General environmental concerns: Same as discussed in the national decision document.

(e) Wetlands: Utility lines may affect a variety of wetland types in Michigan, but predominantly forested wetlands will be affected. These projects result in adverse impacts to fish and wildlife resources from direct habitat loss, with some long term impacts due to maintenance. The proposed condition that limits the size and location of permanent access roads and substations will reduce adverse impacts. The proposed conditions requiring coordination with MDEQ for more than 2 crossings will provide the District input to assess cumulative effect in ensure that they are no more than minimal.

(f) Historic properties: Same as discussed in the national decision document.

(g) Fish and wildlife values: In addition to the discussion in the national decision document, projects reviewed under NWP 12 in Michigan have the potential to adversely affect fish and wildlife resources as a result of the direct removal of habitat features as well as the indirect impacts from maintenance of utility line corridors, substations, and permanent access roads. Songbirds, cavity nesters, game birds, waterfowl, reptiles, amphibians, and small mammals are typically displaced by these actions. Areas of primary production also may be lost, reducing

available food sources for fish and wildlife. The diversity and number of species is expected to decline, and overall minor, adverse impacts are expected. The proposed conditions reducing the maximum footprint to ¼ acre and requiring restoration of disturbed wetland areas will reduce these minor impacts to a minimal level.

(h) Flood hazards: Same as discussed in the national decision document.

(i) Floodplain values: Same as discussed in the national decision document.

(j) Land use: Same as discussed in the national decision document.

(k) Navigation: During construction or maintenance, temporary disruption of navigation may occur on waters used by commercial or recreational vessels. Once construction is completed, previous use patterns should reestablish. Continuing the current regional condition which sets standards for utility lines across navigable waters will minimize conflicts with Federal navigation projects from ill-advised construction such as inadequately buried, or unknown lines. Proposed regional condition (e).1 requires burial of a utility line crossing a Federal navigational channel to a depth of 6 feet below the authorized Federal channel depth. No such restriction exists in the NWP for other areas, and the Detroit District does not propose to add one. In the state of Michigan, such other areas would constitute thousands of square miles of waterways open to and used by the public for boating. Most such vessels are shallow draft. The District is unaware of incidents in which boaters have encountered non-buried utility lines. Overall, minimal, short term adverse impacts are expected.

(l) Shore erosion and accretion: Construction activities in the Great Lakes or tributaries may alter existing erosion or accretion patterns. These issues will be addressed during Detroit District's review of each application, and case-specific special conditions may be added, or an individual permit may be required. Overall impacts are expected to be minimal.

(m) Recreation: Construction activities may temporarily disrupt use of some waters and shoreline areas until the installation is complete. These impacts are expected to be minimal and short term. Michigan supports a very large population of boat-based sport fishermen and women. A utility line placed under the authority of this NWP may be an obstacle to such water usage. However, such structures should be included on charts, and present no greater bottom obstacle than some of the typical fresh water normal obstacles, including brush, logs, and even man-made debris that encourage boater caution. Removal of shading of shoreline waters by the vegetation clearing associated with construction of utility lines may alter the temperature, terrain and habitat of the waters at the project location, and may alter the fishing resource at that location. Hence, although there are minimal local concerns for recreational impacts from the use of this NWP, they present no unusual or exaggerated dangers.

(n) Water supply and conservation: Same as discussed in the national decision document.

(o) Water quality: Same as discussed in the national decision document.

(p) Energy needs: Same as discussed in the national decision document.

- (q) Safety: Same as discussed in the national decision document.
- (r) Food and fiber production: Same as discussed in the national decision document.
- (s) Mineral needs: Same as discussed in the national decision document.
- (t) Considerations of property ownership: Same as discussed in the national decision document.

7.2 Section 404(b)(1) Guidelines Impact Analysis (Subparts C-F)

- (a) Substrate: Same as discussed in the national decision document.
- (b) Suspended particulates/turbidity: Same as discussed in the national decision document.
- (c) Water: Same as discussed in the national decision document.
- (d) Current patterns and water circulation: Same as discussed in the national decision document.
- (e) Normal water level fluctuations: Same as discussed in the national decision document.
- (f) Salinity gradients: Not applicable.
- (g) Threatened and endangered species: Refer to the national decision document and the discussion above in Section 5.0.
- (h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: Same as discussed in the national decision document.
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (3) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Not applicable.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(m) Water-related recreation: Utility lines are normally sited within rights-of-way (ROW) such that competition with non-boating recreational activities either does not exist, or the ROW usage for utility lines is the accepted baseline condition for the recreationers using the site. On the open water, boaters may be less aware of the presence of utility lines, but they would represent underwater obstructions similar to many other such obstructions on the bottom within our waterways. Overall impacts are expected to be minimal.

(n) Aesthetics: Same as discussed in the national decision document.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Same as discussed in the national decision document.

8.0 List of Final Corps Regional Conditions for NWP 12

The Detroit District proposes the following regional conditions specific to NWP 12:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and access roads are limited to 1/4 acre. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. The Corps of Engineers will conduct agency coordination with the Michigan Department of Environmental Quality for overall projects proposing more than two crossings of waters of the U.S. and/or more than one acre of impacts to waters of the U.S.
- e. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
 - 1) the line must be embedded at least 6 feet below the authorized Federal channel depth;
 - 2) existing and proposed elevation information on precise plan and section scale drawings are required;
 - 3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- f. The application must provide the latitude and longitude (or UTM coordinates) for each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.
- g. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be disposed of in uplands.

Regional Conditions Applicable to all NWPs in Michigan

8.1 Regional condition 1

Based on a joint processing agreement between the Corps of Engineers (Corps) and the Michigan Department of Environmental Quality (MDEQ), submittal of a joint Corps/MDEQ permit application is required for projects in Michigan. The submittal of an application is not an authorization to perform the work.

8.2 Regional condition 2

In NWP verification letters, the Corps will state that: "The permittee shall not initiate activities authorized under the NWP until all required State authorizations have been received."

8.3 Regional condition 3

If the Michigan Department of Environmental Quality has issued its authorization, we shall presume that 401 Water Quality Certification and Coastal Zone Management certification has been satisfied.

8.4 Regional condition 4

Excavation/dredging from areas of known or suspected contamination requires:

- a. Placement of the material in a Confined Disposal Facility or MDEQ Class II landfill;
or
- b. Placement of the material shoreward of a bulkhead or in uplands, and covered with at least 2 feet of clay and a layer of sod; or
- c. Testing to demonstrate that the material is not contaminated. If the material is determined to be contaminated, it must be disposed of in a. or b. above.

8.5 Regional condition 5

Dredging will be performed during MDNR preferred dredge periods except when the Corps has specifically determined that the limits are unwarranted (for example, MDEQ has issued a permit and has not restricted the dredging activities to these periods).

8.6 Regional condition 6

Critical Resource Waters:

- a. NOAA-Designated Marine Sanctuaries: The Thunder Bay National Marine Sanctuary and Underwater Preserve is located in Lake Huron off Alpena, Michigan.
- b. National Estuarine Research Reserves (NERR): There are no NERRs within the Detroit District.
- c. State Natural Heritage Sites: There are no areas designated as state natural heritage sites through a state legislative or regulatory process.

d. Outstanding National Resource Waters or Other Waters Officially Designated: The list of Critical Resources Waters (General Condition 19) in Michigan is amended to include the following:

- (i) All areas designated under Part 351, Wilderness and Natural Areas, of the Natural Resources and Environmental Protection Act, Public Act 451, 1994, as amended.
- (ii) All rivers designated under Part 305, Natural Rivers, of the Natural Resources and Environmental Protection Act, as amended.
- (iii) All Environmental Areas designated under Part 323, Shorelands Protection and Management, of the Natural Resources and Environmental Protection Act, as amended.

8.7 Regional condition 7

National Wild and Scenic Rivers (NWSR): The following Wild & Scenic Rivers are located within Detroit District:

- Au Sable River – main stem from the Mio Pond project boundary downstream to the Alcona Pond project boundary.
- Bear Creek (Manistee County) – Coates Highway to the confluence with the Manistee River.
- Black River (Gogebic County) - from the Ottawa National Forest boundary to Lake Superior.
- Carp River – from the west section line of section 30, T43N, R5W to Lake Huron.
- Indian River – from Hovey Lake to Indian Lake.
- Manistee River – from the MDNR boat ramp below Tippy Dam to the Michigan State Highway 55 bridge.
- Ontonagon River – East Branch from its origin to the Ottawa NF boundary; the Middle Branch from its origin to the northern boundary of the Ottawa NF, the Cisco Branch from its origin at Cisco Lake Dam to its confluence with Ten-Mile Creek south of Ewen, the West Branch from its confluence with Cascade Falls to Victoria Reservoir.
- Paint River – main stem from the confluence of the North and South Branches to the Ottawa NF boundary, the North Branch from its origin to its confluence with the South Branch, the South Branch from its origin to its confluence with the North Branch.
- Pere Marquette River – the segment downstream from the junction of the Middle and Little south Branches to its junction with Pere Marquette Highway (old US Highway 31).
- Pine River – the segment from Lincoln Bridge to the east 1/16th line of Section 16, T21N, R13W.
- Presque Isle River – the main stem from the confluence of the East and West Branches to the Minnewawa Falls, the East Branch within the Ottawa NF, the South Branch within the Ottawa NF, the West Branch within the Ottawa NF.
- Sturgeon River (Baraga and Houghton Counties) – from its entry into the Ottawa NF to the northern boundary of the Ottawa NF.
- Sturgeon River (Alger and Delta Counties) – from the north line of Section 26, T43N, R19W to Lake Michigan.
- Tahquamenon River East Branch – from its origin to the Hiawatha National Forest boundary.
- Whitefish River – The main stem from its confluence with the East and West Branches to Lake Michigan. The East Branch from the crossing of County Road 003 to its confluence with the West Branch. The West Branch from County Road 444 to its confluence with the East Branch.

Yellow Dog River – From its origin at the outlet of Bulldog Lake Dam to the boundary of the Ottawa NF.

Portions of the following have also been designated as a “study river” for possible inclusion in the system: Brule River, Carp River, Little Manistee River, Paint River, Presque Isle River, Ontonagon River, Sturgeon River (Baraga and Houghton Counties), Sturgeon River (Alger and Delta Counties), Tahquamenon River, White River, Whitefish River.

8.8 Regional condition 8

Critical Habitat for Federally Listed Threatened and Endangered Species in the Detroit District:

Critical habitat for the piping plover (*Charadrius melodus*) in Michigan was designated in the May 7, 2001 Federal Register (Vol. 66, No. 88, pages 22938-22969).

Critical habitat for the Hine’s Emerald Dragonfly (*Somatochlora hineana*) in Michigan was proposed on July 26, 2006 Federal Register (Vol. 71, No. 143, pages 42441-42519).

9.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

(1) The MDEQ provided a final determination on Section 401 Water Quality Certification (WQC)/Coastal Zone Management Act (CZMA) for this NWP on August 3, 2007 (Encl. 10) to include the following specific regional conditions:

- a. For substations and permanent access roads, no discharge is authorized in areas below the OHWM, areas subject to inundation by the adjacent water body, or areas which otherwise provide fish habitat functions.
- b. Impacts for substations and access roads are limited to 1/4 acre. Applicants must demonstrate that upland alternatives are not practicable.
- c. Impacted wetlands outside of permanently maintained rights of way shall be restored to the same or more valuable wetland type (e.g., forested wetlands shall be restored to forested wetlands). Within permanently maintained rights of way, impacted wetlands shall be restored, unless otherwise authorized by the Corps.
- d. The Corps of Engineers will conduct agency coordination with the Michigan Department of Environmental Quality for overall projects proposing more than two crossings of waters of the U.S. and/or more than one acre of impacts to waters of the U.S.
- e. For utility lines placed across the channel of an authorized Federal navigation project, the following conditions apply:
 - 1) the line must be embedded at least 6 feet below the authorized Federal channel depth;
 - 2) existing and proposed elevation information on precise plan and section scale drawings are required;

- 3) within 60 days after construction, an as-built survey must be provided indicating the points of entry and exit of the installation.
- f. The application must provide the latitude and longitude (or UTM coordinates) of each end of the utility line at the limits of Corps jurisdiction (OHWM or upland limit of wetlands), and for each point between where the utility changes direction.
- g. All excavated and dredged material, other than that used to backfill the trench as authorized pursuant to NWP 12, shall be disposed of in uplands.

(2) The MDEQ provided an addendum to its comments on May 24, 2007 (Encl. 7) stating a general condition applicable to all NWPs in order to receive Section 401 Water Quality Certification (WQC) and Section 307(c) (1) Coastal Zone Management (CZM) federal consistency:

In sensitive natural resource areas NWPs may only be issued if a state permit is also issued. These areas include: Designated Natural Rivers, Designated High Risk Erosion Areas, Designated Wilderness and Natural Areas, Designated Environmental Areas, areas containing state or federally listed or proposed threatened or endangered species, Designated Trout Streams, Designated Critical Dune Areas, and identified historic or archeological areas. NWPs issued absent state permit in these areas are denied Section 401 water quality certification and would be inconsistent with Michigan's CZM Program.

The District will include this as an MDEQ general condition in NWP 12 and each NWP.

(3) The Detroit District provided its public notice and communicated or attempted to communicate three times with each Native American Tribe with interests in Michigan. The District responded to a few questions. No Tribe provided any comments to the proposed NWPs.

(4) The U.S. Environmental Protection Agency (EPA) has responsibility for 401 water quality certification on tribal lands in Michigan. Detroit District provided notification to EPA of the issuance in the Federal Register of the proposed NWPs (Encl. 4). The District notified EPA of the issuance of the Detroit District's public notice for proposed regional conditions for the NWPs (Encl. 5). Both communications apprised EPA of the 60-day response period after the final NWPs were issued in the Federal Register to provide input. Finally, Detroit District provided an alert to the impending lapse of the 60-day deadline (Encl. 6). No communication was received from EPA. Therefore, we presume that Section 401 WQC on tribal lands is waived.

10.0 Cumulative Impacts

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. During calendar years 2002-2006, Detroit District verified 146 NWP 12s in Michigan, consisting of 33, 46, 29, 19, and 19 actions respectively. Based on past use, the Detroit District anticipates that NWP 12 would be used approximately 30

times per year in Michigan, resulting in the impacts to approximately 2.0 acres of wetlands perhaps as much as 3 miles per year of open water areas in lakes and streams, depending on whether utility services are being supplied to various islands, as in the past. In most cases, these impacts are temporary, as utility lines are buried, and cover is restored over the line. Cuts through palustrine cover restores fairly rapidly; only in scrub-shrub and forested wetlands are the temporary impacts to woody vegetation slow to recover. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Detroit District estimates that approximately 2 acres of compensatory mitigation will be required over the duration of the NWP. Should circumstances indicate that more compensatory mitigation is necessary, the District Engineer will require it. This will offset the authorized losses of waters of the United States and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

The terms and conditions of the NWP, including the pre-construction notification requirements and the regional conditions listed in Section 7.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in General Condition 19, the regional conditions 6, 7, and 8 discussed in this document, the pre-construction notification requirements of the NWP, and the application requirements in regional condition 1. Through the pre-construction notification process, the Detroit District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

Detroit District will use its joint application process with the State of Michigan to evaluate and determine whether activities may result in more than minimal individual or cumulative adverse effects. If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

11.0 Final Determination

Based on the considerations discussed above, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that this NWP, including its terms and conditions, all regional conditions, and limitations, will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.

Date: _____

BRUCE A. BERWICK

Division Engineer
Great Lakes & Ohio River Division

Enclosures:

1. Public Notice dtd. Oct. 24, 2006 & distribution lists
2. USFWS letter Dec. 8, 2006
3. not referenced
4. USACE letter to EPA Oct. 19, 2006
5. USACE letter to EPA Oct. 24, 2006
6. USACE letter to EPA Apr. 30, 2007
7. MDEQ letter May 24, 2007
8. MDEQ letter Dec. 8, 2006
9. not referenced
10. MDEQ email Aug. 3, 2007